

29 SEP 2006



UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Julie A. Heider  
STERNE KESSLER GOLDSTEIN FOX  
1100 New York Avenue, NW  
Washington, DC 20005

In re Application of : DECISION ON  
HARIHARAN, Kandasamy et al :  
Application No. 10/530,951 :  
PCT No.: PCT/US03/18253 :  
Int. Filing Date: 10 June 2003 :  
Priority Date: 10 June 2002 : PETITION UNDER  
Attorney's Docket No.: 037003-0304261 :  
For: GENES OVEREXPRESSED BY :  
CANCER AND THEIR USE IN DEVELOPING :  
NOVEL THERAPEUTICS : 37 CFR 1.137 (b)

This decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)," filed on 18 August 2006.

### **BACKGROUND**

On 27 June 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by the International application number and International filing date must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond, and that failure to properly respond would result in abandonment.

On 18 August 2006, applicants filed the instant petition under 37 CFR 1.137(b).

### **DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any

terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting an executed declaration, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1) - (4) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371(c)(1),(c)(2), and (c)(4) date of this application is **18 August 2006**.



Rafael Bacares

PCT Legal Examiner

PCT Legal Office

Telephone: (571) 272-3276

Facsimile: (571) 273-0459